

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

Jens Erik Sorensen,

NO. C 08-00095 JW

Plaintiff,

**ORDER DENYING DEFENDANT'S
MOTION TO STAY**

v.

Lexar Media, Inc.,

Defendant.

Plaintiff Jens Erik Sorensen brings this action as trustee of Sorensen Research and Development Trust, alleging that Defendant Lexar Media, Inc.'s "Jump Drive" product infringes U.S. Patent No. 4,935,184 (the "'184 Patent"). The '184 Patent discloses, *inter alia*, a method for forming injection molded plastic. Before the Court is Defendant's Motion to Stay. (hereafter, "Motion," Docket Item No. 12.) The Court found the motion appropriate for submission without oral argument. See Civ. L.R. 7-1(b). Based on the papers submitted to date, the Court DENIES Defendant's Motion to Stay.

Defendant moves to stay pending the outcome of a reexamination of the '184 Patent on the grounds that a stay will conserve judicial resources and avoid prejudice to Defendant. (Motion at 3.) Plaintiff contends that a stay will result in undue delay in resolving the issues in this case. (Plaintiff's Opposition to Defendant's Motion to Stay at 5, Docket Item No. 18.)

A court has broad discretion to stay an action before it, pending resolution of other proceedings. Leyva v. Certified Grocers of California, Ltd., 593 F.2d 857, 863-64 (9th Cir. 1979). This authority includes the discretion to stay an action pending the outcome of reexamination

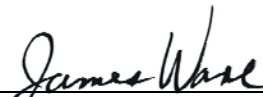
1 proceedings at the United States Patent and Trademark Office (“PTO”). Ethicon, Inc. v. Quigg, 849
2 F.2d 1422, 1426-27 (Fed. Cir. 1988). However, “[t]he court is not required to stay judicial
3 resolution in view of the reexaminations.” Viskase Corp. v. American Nat. Can Co., 261 F.3d 1316,
4 1328 (Fed. Cir. 2001).

5 In this case, Defendant has not made a sufficient showing to warrant a stay. While the ‘184
6 Patent is in reexamination, the examiner at the PTO has not as of yet cancelled any claims or issued
7 a final office action. (Declaration of Joseph H. Lee in Support of Defendant’s Motion to Stay, Ex.
8 C, Docket Item No. 13.) A reexamination may take up to several years to run its course. (Id., Ex. F
9 [PTO *Ex Parte* Reexamination Filing Data, December 31, 2007] at 2.) As of the 2007, the PTO
10 determined that the average pendency of an *ex parte* reexamination is two years. (Id.) Appeals
11 create potential for the process to take even longer. In that time, the Court could make substantial
12 progress in interpreting the patent at issue and otherwise moving the action toward resolution.

13 Accordingly, the Court DENIES Defendant’s Motion to Stay at this time. The parties shall
14 attend the case management conference currently set for **June 2, 2008 at 10 a.m.** to discuss a
15 schedule for this case. Pursuant to the Patent Local Rules, the parties shall file a Joint Case
16 Management Statement on or before **May 23, 2008**.

17 In light of this Order, the hearing on the motion presently scheduled for May 5, 2008 is
18 VACATED.

19
20 Dated: April 30, 2008



JAMES WARE
United States District Judge

1 **THIS IS TO CERTIFY THAT COPIES OF THIS ORDER HAVE BEEN DELIVERED TO:**

2 James Michael Kaler michael@kalerlaw.com
3 Jared Bobrow jared.bobrow@weil.com
4 Melody Ann Kramer mak@kramerlawip.com

5 **Dated: April 30, 2008**

Richard W. Wiekling, Clerk

6
7 **By: /s/ JW Chambers**

Elizabeth Garcia
Courtroom Deputy